IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
Suit No. 329 of 1987

The Board of Trustees of the
Port of Bombay ..Plaintiff

vs.

M/s Mangla International and
another ..Defendants

Mr.U.J.Makhija i/b Mulla and Mulla for plaintiff.

CORAM: S.C.DHARMADHIKARI J
5th September,2007

P.C.

1. It is erroneously mentioned in the order dated 6th August, 2007 that the suit has been decreed in so far as defendant no.1. The suit has not been decreed against defendant no.1 despite defendant no.1 not filing any written statement.

2. Defendant no.2 has not been appearing although written statement is filed and issues have been framed.

3. In such circumstances, Mr.Makhija states that the affidavit of documents and affidavit in lieu of the examination in chief being filed, this Court should pass appropriate order decreeing the suit against both the defendants.

4. He submits that the learned Advocate appearing for defendant no.2 has appeared before this Court

and sought time to obtain discharge from the proceedings. This request has been specifically noted in both the orders referred to above. However, there is no one appearing for the defendants. Mr.Bootwala has not remained present to inform this Court as to whether he has obtained the discharge from the proceedings after duly intimating his clients.

5. In such circumstances, I proceed to hear the suit and dispose of it finally. The plaint averments and contents as well as existence of the annexures thereto are sought to be proved by the oral and documentary evidence. The copy of the affidavit in lieu of examination in chief of plaintiff’s witness has already been furnished to defendant no.2. The defendant no.1 has not filed written statement. The affidavit of plaintiff’s witness is tendered by Shri Makhija. The witness is present. The witness confirms the statements therein and states that he has affirmed and signed the affidavit. He confirms his signature. the affidavit is taken on record.

6. The claim in the present suit as is clear from the affidavit in lieu of examination in chief of the Assistant Docks Manager on behalf of the

plaintiffs, is arising out of the consignment of 15 containers more particularly referred to in para 2 of his deposition. In or about August, 1982 the consignment has been discharged by the vessel is a fact which is sought to be proved by relying upon the Import General Manifest. The Import General Manifest was furnished to the plaintiffs by defendant no.2 as owners/agents of the vessel. They discharged the cargo in the custody of the plaintiffs. The first defendant was shown as importer of the consignment. The Import General Manifest No.1310 dated 31st August, 1982 pertaining to the said consignment is produced in original. The same is taken on record and marked as Exhibit P-1. The witness is present in Court. He has confirmed not only the statements in the affidavit but his signature below the same. He has produced the Import General Manifest in original and has invited my attention to item no.10 of the same. It refers to the consignment landed by the subject vessel and the details of the importer. Registry to take certified true copy of the original Import General Manifest on record and return the original on the plaintiffs' furnishing usual undertaking.

7. Further deposition of the witness is that the defendants failed to clear these consignments. 14

containers were lying at Chembur yard and one was lying at other warehouse, the details of which are also set out in para 3 of the deposition.

8. Upon failure of the defendants to clear the goods within 7 clear days from the date of their landing, the consignments were put up for sale. Due intimation in writing was given to both the defendants with regard to the sale of consignments and they were called upon to clear them failing which the plaintiffs informed them of the sale without further notice. Both the sale notices are dated 28th February, 1983. Since the originals are received by the defendants, the certified true copies of the same are tendered. The witness proves the contents thereof and identifies the signatures below the same. The signature is that of one V.B.Vanwari, Asstt.Manager (Sales) of the plaintiffs. The case specifically set out is that the first defendant abandoned the cargo and that abandonment is in writing of the first defendant dated 3rd March, 1983. The said letter is produced in original. The receipt thereof as evidenced by stamp of the plaintiffs is proved by the said witness. This letter is, therefore, marked in evidence as Exhibit P-2.

9. There are further intimations which are more particularly set out in para 6 of the deposition. The contents of which are also proved together with signature of the Asstt.Manager (Sales). The acknowledgements are also proved in as much as the witness states that they have been despatched in ordinary and usual course of business. The said letters are taken on record and marked as Exhibit P-3 and P-4 respectively.

10. In para 7 of the deposition the Advertisement published in the issue of Times of India dated 14th March, 1983 and entry in the Govt. Gazette dated 17th March, 1983 are produced in as much as the photo copies of the same are placed on record. The explanation has been given with regard to absence of the original. The photo copies have been kept in separate file and from the file the photo copies have been produced. The said photocopy of the advertisement is taken on record and marked as Exhibit P-5.

11. The same can be relied upon in absence of any defence on behalf of defendant no.1 and no the dispute raised with regard to their selling by defendant no.2. Defendant no.2 has been served with the affidavit in lieu of the evidence and

documents along with the list but none appears to challenge the correctness or veracity thereof. It is in such circumstances that the witness deposed that the consignment was put up for sale and after adjusting the proceeds towards the dues of the plaintiffs, the deficit of Rs.5,40,090.96 remains and which has been claimed by demand notice referred to in para 8 of the deposition. Once again the first defendant reiterated the stand that they had abandoned the consignment and have nothing to do with regard to the same. The second defendant was also intimated and letters have been received respectively by each one of them. The plaintiffs' witness confirms the statement made in these letters and states that they have been despatched in the ordinary and regular course of business. The contents are verified from the accounts which have been maintained with regard to Port Trust charges. Thus, these documents are also relied upon and proved.

12. Thereafter a letter dated 31st October, 1983 addressed by second defendant is also produced. The contents of this letter are clear enough in as much as the second defendant contends that the consignment having been sold by public auction does not mean that the amount can be recovered from

them. Reliance is placed upon section 63(2) of the Major Port Trust Act on the basis that the second defendants are the shipping agents for their principal. They submitted an application for payment of surplus amount of sale proceeds in order to meet the portion of expenses incurred by owners on account of container lease and container rentals. They have relied upon the earlier application. The said letter dated 31st October, 1983 is also taken on record and marked as Exhibit P-6.

13. The plaintiffs have disputed the contents of this letter by their letter dated 12th December, 1983 and informed that they are not entitled to claim the surplus amount, if any. In any event there was a deficit and no surplus of sale proceeds. This letter is also duly received and, therefore, the copy thereof can be safely relied upon. The same is taken on record and marked as Exhibit P-7. The said letter is in reply to defendant no.2's letter dated 31st October, 1983. Ultimately, the suit notice of 24th February, 1986 signed by the Asstt.Manager (Sales) Smt.V.R.Hardikar is relied upon by producing the copy thereof. The original thereof has been duly received by the first defendant. The copy of the

suit notice dated 24th February, 1986 is taken on record and marked as Exhibit P-8. Similar letter is addressed to second defendant on 7th March, 1986 and copy thereof is produced. The copy of the said letter dated 7th March, 1986 is taken on record and marked as Exhibit P-9.

14. The defendants having failed to pay the sum the present suit has been filed.

15. The deficit is sought to be demanded on the basis of the work sheet and allocation sheet showing the calculations. The defendants have failed to pay the amount or any part thereof. The said working sheet and allocation sheet have been duly scrutinized and verified by the concerned officials and they have been produced from the custody of the plaintiff. The witness states that he is the plaintiff's Asstt.Docks Manager and is depositing before the Court after having perused the working sheets and duly verified the same. The said working sheet and allocation sheet are produced and marked as Exhibit P-10 and Exhibit P-11 respectively. In such circumstances, even the working sheets can be relied upon in absence of any defence.

16. Having perused the plaint averments together with deposition of the plaintiffs' witness and the documents exhibited I am fully satisfied that there is no impediment for this Court to decree the suit. It is clear that the claim of the plaintiff is within limitation in as much as the plaint averments in para 15 are clear. They are not refuted by the first defendant. However, the second defendant raised a dispute thereto but has not remained present to either cross examine the plaintiffs' witness nor has led any evidence to show that the claim is not within limitation.

17. Since the consignments have landed at Mumbai and they were sold at Mumbai and the amount was due and payable at Mumbai, this Court has jurisdiction to entertain and try the suit. Further it is clear that the defendant nos.1 and 2 are carrying on business at Mumbai. In absence of any cross examination by defendant no.1 nor defendant no.2 remaining present to lead evidence to prove his case the suit is decreed. Additionally Mr.Makhija placed reliance upon the Division Bench judgment in the matter of the Trustees of the Port of Bombay Vs. M/s Jayantilal L.Gandhi reported in A.I.R.1979 Bombay 12. There are ample powers conferred upon this Court to decree the suit in absence of any

cross examination of the plaintiffs' witness by the defendants. The defendants have also not availed of any opportunity to lead their own evidence. The claim is thus proved. Hence, the suit is decreed as prayed. Advocates' cost as per rules. No order as to costs.

18. Issuance of certified copy expedited.

(S.C.DHARMADHIKARI J.)